the Bar Association which drafted Section 10512-19.[5] This Committee believed that the former statute, General Code, Section 8030, was sufficiently broad to permit inheritance through the adoptive parent, but in the face of contrary interpretation by the courts, the Committee recommended that the additional language of Section 10512-19 be inserted.[6] The court in the principal case takes cognizance of this statutory development and carries out its purpose by allowing the adopted child to inherit through its adoptive parent.

J. P. M.

EQUITY

INJUNCTION — AGAINST INEQUITABLE LITIGATION IN FOREIGN JURISDICTION—FEDERAL EMPLOYERS' LIABILITY ACT

Kepner, employed by the Baltimore and Ohio Railroad, was injured in the course of his employment in Ohio, the state of his residence. Choosing from among the three federal forums available under the venue section of the Federal Employers' Liability Act,[1] he brought an action for damages in a United States district court for New York, where the railroad was doing business. After institution of the suit, the defendant road brought this action in an Ohio court, asking that Kepner be enjoined from further prosecuting the foreign suit, alleging that it was brought for purposes of harrassment, that it would cause the defendant great inconvenience and expense to defend the action 700 miles from the place of injury, and that a federal district court in Ohio could equitably hear and decide the case on its merits. Kepner's demurrer was sustained and the injunction refused. On successive appeals, culminating in the Supreme Court of the United States, *held,* affirmed, on the ground that a state court may not enjoin the exercise of the right given by

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[5] Snyder v. Swope, Director of Safety, 23 Ohio L. R. 361, 366 (1922).

[1] 45 U. S. C. 56, to the effect that an action under the F.E.L.A. may be brought in the district of the residence of the defendant, in the district in which the cause of action arose, or in the district in which the defendant is doing business at the time of the bringing of the action.

the FELA (Federal Employers' Liability Act) to sue in a federal court in a foreign state. *Baltimore & Ohio R. R.* v. *Kepner,* 62 Sup. Ct. 6 (1941).

It is a well established rule that a court of equity, having jurisdiction of the person, may enjoin a plaintiff from prosecuting a suit in a foreign jurisdiction when that choice of forum results in unfair advantage to him as against the defendant.[2] Conversely, under the well-recognized doctrine of *forum non conveniens,* a court having statutory jurisdiction may decline its facilities to a suit that in all justice should be tried in another forum.[3] These two rules have been applied by the vast majority of the courts in cases arising under the venue sections of most federal statutes, and under the venue section of the FELA where the action for damages has been brought in a foreign state court,[4] such courts being given jurisdiction concurrent with that of federal courts by this act. But where one within the F. E. L. A. takes advantage of the venue laid in a distant federal court, the Supreme Court now ratifies the position already taken by inferior courts that such a plaintiff is immune to the twin techniques of *forum non conveniens* and injunction of foreign suit, by which the interstate adjustment of the place of trial in civil actions is ordinarily administered.

The majority opinion of the Federal Supreme Court lacking any satisfactory explanation for the judicial course thus taken, it is necessary to look to the opinion of the Ohio Supreme Court for an attempted *rationale.*[5] That court based its argument on the premise that the section of the F. E. L. A. conferring jurisdiction on the three federal courts is a command to the various courts named to hear any eligible case presented to them. This command is such as to deny to the federal courts the right to exercise the doctrine of *forum non conveniens.* From this unprecedented finding, the court concluded that there was vested in the plaintiff a "federal right," with which there must be no interference. Buttressing this reasoning

[2] State *ex rel.* R. R. Co. v. Nortoni, 331 Mo. 764, 55 S. W. (2d) 272 (1932); B. & O. Rd. v. Bole, 31 F. Supp. 221 (1940); B. & O. Rd. v. Clem, 36 F. Supp. 703 (1941); Crandall v. Hobbe, 53 F. (2d) 969 (1931).

[3] Canada Malting Co. v. Paterson Steamships, Inc., 285 U. S. 413 (1931); Massachusetts v. Missouri, 308 U. S. 1 (1939); Rogers v. Guaranty Trust Co., 288 U. S. 123 (1932).

[4] Injunctions granted to restrain the prosecution of a suit in a foreign state court: State *ex rel.* R. R. Co. v. Nortoni, 331 Mo. 764, 55 S. W. (2d) 272 (1932); Reed's Administratrix v. Illinois Central R. Co., 182 Ky. 455, 206 S. W. 794 (1940); Kern v. Cleveland, C. C. & St. L. R. Co., 204 Ind. 595, 185 N. E. 446 (1933).

[5] B. & O. R. R. Co. v. Kepner, 137 Ohio St. 409, 30 N. E. (2d) 982 (1940).

by the Ohio court, and constituting the one coherent argument offered by the United States Supreme Court, was the resort to the legislative history of the Act as demonstrating Congressional intent to confer on the plaintiff an unqualified right to sue in any one of the three tribunals provided. The acknowledged power to enjoin suit under the F. E. L. A. in a foreign state court was distinguished by Ohio's high court on the ground that jurisdiction and venue for such suits cannot be made mandatory upon the state courts by Congress. State courts thus possessing only a discretionary jurisdiction, the plaintiff has but a potential privilege, from the enjoyment of which he can be enjoined in appropriate cases.

The legislative history of the F. E. L. A., however, lends little support to this line of reasoning. True, it was to relieve the employee of the inequitable restriction of his action to the district in which the defendant railroad was an inhabitant that the venue section was amended in 1910 to admit his action to other courts. But it does not follow that because Congress sought to relieve one inequitable situation it intended to do so at the needless expense of creating another. Rather, it seems more reasonable to impute to Congress the intent to make possible, through affording a choice of federal courts, judicial manipulation of jurisdiction in these cases with an eye to the equity of the particular situation. Furthermore, neither legislative nor sound judicial precedent supports the judgment entered in the instant litigation. Analyses of the decisions which the principal case now canonizes into a fixed rule reveals them to be equivocal, forced, or poorly reasoned.[6] Against them are ranged three unanimous Supreme Court determinations,[7] cited by the dissenters in the Federal Supreme Court, to the effect that

[6] In *B. & O. v. Clem*, 36 F. Supp. 703 (1940) a disappointed Judge Baker, who the year previous had expressly stated that the venue section of the F.E.L.A. was not intended to, and does not, limit Equity's power to restrain persons within its jurisdiction from exercising a purely legal right in an unjust and inequitable manner in a foreign jurisdiction (*B. & O. R. R. v. Bole*, 31 F. Supp. 221), reluctantly bowed to the precedent of *C. & O. v. Vigor*, 17 F. Supp. 602 (1936) with which he had not previously been acquainted, and denied Equity's power to enjoin suits brought under the F.E.L.A. in federal courts.

In *C. & O. v. Vigor*, 17 F. Supp. 602 (1936), the court, while seeming to rely on all the arguments propounded by the group denying the right of Equity to enjoin these suits, and while refusing to grant the injunction requested, did not come out and state unequivocally that such a suit could never be enjoined, but rather stated that insufficient grounds were shown to justify the granting of the injunctive relief prayed for. The impression is left that the court, in a case of extreme hardship, would not be adverse to granting an injunction.

[7] Atchison Ry. v. Wells, 265 U. S. 101 (1924); Michigan Central v. Mix, 278 U. S. 492 (1929); Denver Ry. v. Terti, 284 U. S. 284 (1932).

a Congressional declaration that a federal court has jurisdiction is not an inflexible demand for the exercise of the court's authority, to the unnecessary injury of the defendant and the public. And if the privilege given to the plaintiff to choose the court in which to bring his suit under the F. E. L. A. be regarded as an absolute command to the federal courts to take jurisdiction without regard to considerations of justice and fairness, it would seem that the same effect should be given to other federal venue provisions providing several courts with jurisdiction and venue. But such is not the case, although the language of the F. E. L. A. is similar to that of comparable venue sections.[8]

Nor is it undebatable, if Congress did actually intend the effect of the F. E. L. A. to be that which has now been judicially attributed to it, that Congress had the constitutional authority to enact such legislation. The extent of that authority is directly responsive to the distinction between jurisdiction and power; Congress has unquestioned control over the jurisdiction of the inferior federal courts, but its authority to infringe upon the inherent powers of the federal courts is limited to minor regulation.[9] If *forum non conveniens* be viewed as a device to aid in the determination of a proper place of trial, then in a broad sense a statute of this tenor might well be regarded as a valid Congressional regulation of federal court jurisdiction. But if the doctrine be taken in its immediate sense, such a statute concerns the power of a court of equity to exercise its full judicial function, and on the authority of the *Michaelson* case would be unconstitutional. If the latter view were followed, federal courts could exercise their discretion in cases seeking a hearing in their forum, there would be no basis on which to distinguish the suits in federal and those in state courts, and the power of the state court to enjoin a resident in its jurisdiction from bringing his action in a distant federal court would be a natural sequitur.

W. C. D.

[8] 28 U.S.C.A. 112 (suits based on diversity of citizenship).
28 U.S.C.A. 53 (suits by or against China Trade Act corporations).
28 U.S.C.A. 105 (suits for recovery of taxes).
[9] Michaelson v. United States, 291 Fed. 940 (1923).